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February 10, 2006

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Rm. TW-A325
Washington, D.C. 20554

**Re: GN Docket No. 05-231
In the Matter of Closed Captioning of Video Programming
Telecommunications for the Deaf, Inc. Petition for Rulemaking
Notice of *Ex Parte* Written Presentation**

Dear Ms. Dortch:

AZN Television, Comcast SportsNet (Mid-Atlantic), Comcast SportsNet (Philadelphia), E! Entertainment Television, G4 – videogame tv, The Golf Channel, Inspirational Life Television, The Inspiration Network, Outdoor Life Network, and Style Network (collectively referred to as “the Networks”)¹ are part of a group of multichannel networks that jointly filed initial comments in this proceeding.² Earlier today, the Networks submitted the attached *Ex Parte* Written Presentation to Steve Garner and Sonia Greenaway-Mickle of the Media Bureau in order to respond to three discrete issues addressed in the reply comments filed by Telecommunications for the Deaf and Hard of Hearing, Inc. and other parties (collectively, “TDI”) on December 16, 2005 (“TDI Reply Comments”).³

The TDI Reply Comments addressed several issues that could have been – indeed, should have been – addressed in initial comments, including several new requests for regulations.

¹ The corporate entities of the Networks include: International Networks LLC; Comcast SportsNet Mid-Atlantic, L.P. d/b/a Comcast SportsNet; Comcast SportsNet Philadelphia, L.P. d/b/a Comcast SportsNet; E! Entertainment Television, Inc. d/b/a E! Entertainment Television and The Style Network; G4 Media, Inc.; The Golf Channel, Inc.; The Inspirational Network, Inc. d/b/a The Inspiration Networks (INSP and iLifetv); and Outdoor Life Network, LLC.

² See Comments of AZN Television *et al.* (filed November 10, 2005).

³ These parties include the Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, National Association of the Deaf, and Association of Late Deafened Adults, Inc.

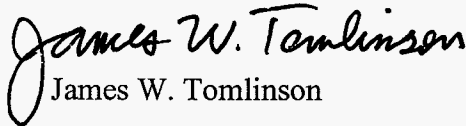
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Because TDI addressed these matters in its reply comments, the Networks were foreclosed from responding within the pleading cycle established by the Commission. Thus, in the interest of obtaining a full and complete record and contributing to the public debate, the Networks submit, and respectfully request that the Commission consider, the accompanying *Ex Parte* Written Presentation.

To the extent that the Commission deems the accompanying *Ex Parte* Written Presentation to be late-filed comments, for the same reasons, the Networks respectfully request that the Commission accept and consider the *Ex Parte* Written Presentation pursuant to 47 C.F.R. § 1.46.

Because this proceeding is a permit-but-disclose proceeding, any party desiring to respond to this *Ex Parte* Written Presentation can do so through the Commission's process for making *ex parte* presentations. Thus, acceptance and consideration of this *Ex Parte* Written Presentation will not prejudice any other commenter.

Pursuant to 47 C.F.R. § 1.1206, this letter is being filed electronically with the Commission.


James W. Tomlinson

Attorney for:

**AZN TELEVISION
COMCAST SPORTSNET (MID ATLANTIC)
COMCAST SPORTSNET (PHILADELPHIA)
E! ENTERTAINMENT TELEVISION
G4 – VIDEOGAME TV
THE GOLF CHANNEL
INSPIRATIONAL LIFE TELEVISION
THE INSPIRATION NETWORK
OUTDOOR LIFE NETWORK
STYLE NETWORK**

cc: Steve Garner, Media Bureau
Sonia Greenaway-Mickle, Media Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.
Petition for Rulemaking

CG Docket No. 05-231

To: The Commission

***EX PARTE* WRITTEN PRESENTATION OF:**

**AZN TELEVISION
COMCAST SPORTSNET (MID-ATLANTIC)
COMCAST SPORTSNET (PHILADELPHIA)
E! ENTERTAINMENT TELEVISION
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OUTDOOR LIFE NETWORK
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February 10, 2006

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.
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To: The Commission

***EX PARTE* WRITTEN PRESENTATION OF:**

**AZN TELEVISION
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THE INSPIRATION NETWORK
OUTDOOR LIFE NETWORK
STYLE NETWORK**

AZN Television (“AZN”), Comcast SportsNet (Mid-Atlantic) (“CSN-MA”), Comcast SportsNet (Philadelphia) (“CSN-PHL”), E! Entertainment Television (E!), G4 – videogame tv (“G4”), The Golf Channel (“Golf”), Inspirational Life Television (“iLifetv”), The Inspiration Network (“INSP”), Outdoor Life Network (“OLN”) and Style Network (“Style”) (collectively referred to as “the Networks”),¹ submit this *ex parte* written presentation in response to the Notice of Proposed Rulemaking (“NPRM”) issued by

¹ The corporate entities of the Networks include: International Networks LLC; Comcast SportsNet Mid-Atlantic, L.P. d/b/a Comcast SportsNet; Comcast SportsNet Philadelphia, L.P. d/b/a Comcast SportsNet; E! Entertainment Television, Inc. d/b/a E! Entertainment Television and The Style Network; G4 Media, Inc.; The Golf Channel, Inc.; The Inspirational Network, Inc. d/b/a The Inspiration Networks (INSP and iLifetv); and Outdoor Life Network, LLC.

the Federal Communications Commission (“Commission”) on July 14, 2005 in this proceeding.

The Networks are part of a group of multichannel networks that jointly filed initial comments in this proceeding. *See* Comments of AZN Television *et al.* (filed November 10, 2005). This *ex parte* written presentation is submitted in order to respond to three discrete issues addressed in the “reply” comments filed by Telecommunications for the Deaf and Hard of Hearing, Inc. and other parties (collectively, “TDI”) on December 16, 2005 (“TDI Reply Comments”).²

Although this proceeding was initiated by TDI’s Petition for Rulemaking (filed July 23, 2004), TDI chose not to submit initial comments in this proceeding, and instead submitted only “reply” comments. The TDI Reply Comments, however, address several issues that could have been – indeed, *should* have been – addressed in initial comments, including several new requests for regulations. Because TDI addressed these matters in its euphemistically-titled “reply” comments, the Networks were foreclosed from responding within the pleading cycle established by the Commission, as they would have done had TDI addressed these issues in the initial round of comments rather than for the first time in a “reply.” Thus, in the interest of obtaining a full and complete record and contributing to the public debate, the Networks respectfully request that the Commission consider this *ex parte* written presentation.

² These parties include the Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, National Association of the Deaf, and Association of Late Deafened Adults, Inc.

I. THE COMMISSION SHOULD NOT PROHIBIT THE USE OF REAL-TIME STENOCAPTIONING FOR PRE-RECORDED PROGRAMS

With respect to non-technical quality standards, as the Networks noted in their initial comments, the Networks have strong market incentives to deliver high-quality captions.³ The Networks each have invested many millions of dollars to ensure that customers associate the Networks with top-level production quality, and captions are an integral component of each Network's overall brand and image.⁴ The Networks have implemented a number of quality-control standards and processes to ensure accuracy and quality.⁵ As such, non-technical quality standards are unnecessary and unworkable.

In its Reply Comments, TDI asks that the Commission enact a regulation requiring the use of "off-line" captions – *i.e.*, captions that are created and added after a segment has been recorded and before it is aired or played – for all pre-recorded programming. Specifically, TDI states: "Petitioners see no reason why pre-recorded programming should not be virtually error-free. Presumably, pre-recorded programming can be reviewed and edited prior to distribution to correct any mistakes that may have been made during the captioning process. ***All pre-recorded programming should be captioned offline rather than real-time.***" TDI Reply Comments at 7 (emphasis added).

This proposal should be rejected because it was made for the first time in TDI's "reply" comments, and was not one of the issues identified for discussion in the NPRM. But in addition, TDI's proposal demonstrates a fundamental lack of understanding of the process of creating television programming and closed captions. Moreover, TDI's

³ See Comments of AZN Television *et al.* at 7-8.

⁴ *Id.* at 14.

⁵ *Id.* at 17-19.

proposal, if accepted by the Commission, would prohibit the display of an enormous amount of valuable programming that is produced under a tight production schedule.

In some cases, there can be a degree of difference between the quality of real-time stenocaptions and off-line captions. In the Networks' experience, off-line captions generally are very close to 100 percent accurate. By contrast, using today's technology, perfection generally cannot be achieved with real-time stenocaptioning, particularly when there are multiple speakers, speakers with different dialects or a rapid pace of dialogue. Nonetheless, in the Networks' experience, the quality of real-time stenocaptions generally is very good, and the Networks take a variety of quality-control measures to ensure that real-time stenocaptions are delivered with the highest quality possible.⁶

As a standard practice, the Networks use off-line captioning whenever possible.⁷ They do so, despite the considerable cost difference between real-time captions and off-line captions,⁸ because the Networks each have invested many millions of dollars to ensure that customers associate the Networks with top-level production quality, and captions are an integral component of each Network's overall brand and image.

The primary drawback to off-line captions, however, is that generally they take a week or longer to create. Today, most off-line captions are produced by third-party

⁶ In their efforts to ensure that real-time stenocaptions are accurate and of high-quality, each of the Networks has undertaken a number of measures, including some or all of the following: (1) using captioners who are familiar with the network's particular programming genre and terminology commonly used in the dialogue; (2) selecting third-party service providers on the basis of quality and reputation, not just price; (3) providing "prep sheets" – consisting of common terms, phrases and names appearing in the programming – to stenocaptioners in advance to reduce the error rate; (4) regularly monitoring stenocaptioners for accuracy, and requiring an annual report of accuracy statistics; and (5) requesting that certain stenocaptioners be replaced with better-qualified captioners. See Comments of AZN Television *et al.* at 11-12, 15, 17-19.

⁷ See Comments of AZN Television *et al.* at 12.

⁸ For instance, OLN estimates that off-line captions cost almost *six times* as much to produce as real-time stenocaptions.

captioning service providers because, generally speaking, only the larger established program networks (such as **E!** and **Golf**) have sufficient resources to allow them to create in-house captioning departments. So, for most program networks, the process of creating off-line captions requires: (1) the program network to ship the uncaptioned program tapes to the captioning service provider; (2) the service provider to produce the off-line captions; and (3) the service provider to ship the now captioned program tapes back to the program network. In the Networks' experience, the typical turn-around time for off-line captions is *six to seven business days*. Even in this era of overnight delivery, it requires an absolute minimum of four to five business days to insert off-line captions into a television program and payment of a premium "rush delivery" fee over and above the standard fee.⁹

Although the Networks generally use off-line captions whenever possible, there are certain pre-recorded programs that can be captioned only by using real-time stenocaptioning because the programming is produced on a tight production schedule and is time-sensitive. Some examples include the following:

- **OLN's** coverage of *The Tour de France* – one of its highest rated programs each year – includes live coverage (typically in the morning) and a re-airing later in the day (typically in prime-time). TDI's proposed rule would require the re-airing to be delayed for four or five days at best, when the race was either concluded or old news. Such delay caused by a regulation requiring off-line captions would greatly diminish the value of this extraordinarily time-sensitive and high-value programming.

⁹ This is a "best case scenario" timeframe, which assumes that overnight delivery deadlines can be met and the service provider can produce captions within two to three business days, which typically is not the case.

- **Golf's** coverage of professional golf tournaments often is recorded and shown on the network later in the day when the largest audience can watch. In particular, golf tournaments played many time zones away, such as in Europe, the Middle East, Asia and Hawaii, must be taped and shown later in the day. Even with its own in-house captioning department, it would be impossible for **Golf** to create off-line captions for such "pre-recorded" programming within the narrow window between recording and airing.
- The majority of the prime-time programming on **CSN-PHL** and **CSN-MA** (both regional sports networks) is live coverage of professional and collegiate sports events. These events typically are replayed one or two times within the 24 to 48 hour period following the live telecast. Similarly, **OLN's** coverage of Professional Bull Riders events typically is carried on the network live one time and then replayed one or two days later. TDI's proposed rule would require these replays to be delayed until long after the events had taken place.
- One of **G4's** regular programs, *Attack of the Show!*, is filmed live and then taped for repeat airings three times during the week in which it premieres. It would be impossible for **G4** to have off-line captions prepared by its third party provider within the timeframe needed for repeat performances. The same is true for other live special programming events on **G4**, such as *Countdown to Xbox 360*, and its live coverage of E3 (the video game exposition).

- **OLN's** coverage of A1 Grand Prix auto races, which take place around the world, is received via an "international feed," *i.e.*, without commentary. Today, **OLN** adds its own commentary and shows the event on tape-delay, typically within 24 hours. TDI's proposed rule would delay coverage of the race by a week or more, after its commercial value had been greatly diminished.

Tight production schedules are relatively common for multichannel program networks in particular, because they deliver programming 24 hours a day, seven days a week, or 168 hours each week. As demonstrated in the examples above, in the real-world of television production, a significant amount of programming is not finalized or acquired from its source one week or more prior to its display. And program guides (electronic and print) generally require the Networks to have their schedules set *two to four weeks in advance*, so it is not possible for the Networks to rearrange their program schedules at the last minute.

In short, a rule requiring the use of off-line captions for "all pre-recorded programming" would yield only a very modest increase in the accuracy of captions, but would have disastrous consequences for the production of television programming.¹⁰ With such a rule in effect, time-sensitive pre-recorded programming produced under a tight production schedule would either (a) not be produced in the first place, or (b) be shown only after a delay of one week to allow for the inclusion of captions, which would

¹⁰ TDI's proposal cannot be salvaged by its half-hearted suggestion of a narrow exemption for pre-recorded programs "aired on the same day they are produced" (*see* TDI Reply Comments at 7, n. 19) because this exemption would apply only to a small subset of pre-recorded programs for which real-time stenocaptioning is the only feasible captioning method. As discussed above, a timeframe of four to five business days, at a minimum, generally is required for the creation of off-line captions.

diminish the value of time-sensitive programming to all viewers – including the hearing impaired. The Networks respectfully submit that the Commission’s closed captioning rules should not create such an unwarranted and unjustified regulatory intrusion into the television production process.

Indeed, Congress’ goal in enacting Section 713 of the Communications Act¹¹ was simply “to ensure that all Americans ultimately have access to video services and programs.”¹² Congress certainly *did not* intend the Commission to micromanage the production of television programming by effectively banning or delaying, through the application of its closed captioning rules, the display of certain television programs to *all* television viewers. Instead, the Commission should continue to allow the Networks to make decisions about the kind of captioning that is best suited and technically feasible for their programming.

II. THE COMMISSION SHOULD REJECT TDI’S PROPOSAL TO REQUIRE ENORMOUS AND BURSENSOME QUARTERLY COMPLIANCE REPORTS

Another of TDI’s newly launched regulatory proposals – made for the first time in its “reply” comments – is that quarterly certifications provided by video programming providers to distributors should be required to include a litany of information about each and every program shown on the network during the previous calendar quarter.¹³ TDI’s proposed laundry list of required information includes:

- the name of each program;
- a list of episodes;
- the program format (*i.e.*, live or pre-recorded);

¹¹ 47 U.S.C. § 613.

¹² H.R. Report 104-458, 104th Cong., 2d Sess. at 183-84 (1996).

¹³ TDI Reply Comments at 19.

- whether the program is exempt from captioning, including the type of exemption;
- the captioning format (*i.e.*, real-time stenocaptioning, pop-on, roll-up, ENT or other); and
- the name of the captioning company.¹⁴

This proposal, if adopted by the Commission, would create an enormous new administrative burden on program networks, video programming distributors and the Commission.

Depending on the nature of its programming, a program network generally displays between 1,820 and 3,640 programs that are required to be captioned each calendar quarter.¹⁵ Needless to say, quarterly certification reports in the form proposed by TDI would be voluminous – possibly even *hundreds of pages in length* – and each network would be required to send these reports to each of the hundreds of distributors that carry the network's programming.

TDI's proposal fails to recognize that the current system is working well. Consumers can, and do, contact distributors and programming providers to inquire about compliance with the captioning rules.¹⁶ The Networks maintain records of their compliance, and these records are readily available should inquiries arise. Under these circumstances, it is difficult to imagine how persons with hearing disabilities would benefit from a regulation requiring program networks to ship mountains of paper around

¹⁴ *Id.*

¹⁵ This estimate range is based on 91 calendar days in each quarter, each with 20 one-hour timeslots (1,820 captioned hour-long programs) or 40 half-hour timeslots (3,640 captioned half-hour programs).

¹⁶ See Comments of AZN Television *et al.* at 33.

the country every quarter. Indeed, resources that could be used to caption programming instead would be diverted to preparing gargantuan compliance reports.

On top of its proposed rule for video programming providers, TDI also proposes a rule that would require distributors to: (a) compile the compliance reports they receive from the scores of networks they carry; (b) assemble these into a separate report to be filed with the Commission – with *each* network’s compliance report *attached*; and (c) submit this (now Mt. Everest-sized) report to the Commission each quarter.¹⁷ Thus, if the Commission were to adopt TDI’s proposal, the Commission could expect to receive boxes and boxes of documents each quarter covering each of the 9,000 cable systems operating in the United States, along with quarterly reports from thousands of broadcast television stations. It is inconceivable that the Commission has the resources to devote dozens of staff members to review these reports. Indeed, the Commission would need a very large warehouse even to *store* these reports.

In short, TDI proposes a breathtakingly costly and burdensome “solution” to a problem that simply does not exist. The current certification process has been efficient and effective for distributors, program networks and the public.¹⁸ The Commission has twice before rejected a reporting obligation, reasoning that “specific recordkeeping or filing requirements would be unnecessarily burdensome and administratively cumbersome,”¹⁹ and TDI has provided no valid reason for the Commission to revisit this issue. The current rules should not be amended.

¹⁷ TDI Reply Comments at 17-18.

¹⁸ See Comments of AZN Television *et al.* at 34-35.

¹⁹ See *Closed Captioning and Video Description*, Report and Order 13 FCC Rcd. 3272 at ¶ 244 (1997); *Closed Captioning and Video Description*, Order on Reconsideration, 13 FCC Rcd. 19973 at ¶ 118 (1998) (“We will not adopt recordkeeping or reporting requirements as they would impose unnecessary administrative burdens on video programming distributors and the

III. THE COMMISSION SHOULD REJECT TDI'S NEW REQUEST FOR MANDATORY "OUTAGE REPORTS"

In its Reply Comments, TDI proposes that distributors should be required to provide "outage reports" for "all outages" that involve "a complete loss of captioning."²⁰ According to TDI, the rule should require outage reports to be submitted to the Commission within *three hours* of discovery of the outage and "communicated to viewers in real-time, for example, through the Distributor's website and/or a crawl during the outage."²¹ This proposal is entirely new – raised for the first time in TDI's "reply" comments – and was not identified or addressed by the Commission in the NPRM. As such, the proposal should be rejected on that basis alone. But in addition, TDI's new proposal is unprecedented and unnecessary, and would, in fact, be counter-productive.

As the Networks explained in their initial comments, captioning is today a reliable process that presents relatively few technical problems.²² Indeed, those technical problems with the distribution of closed captions that do occur are no more frequent than other technical glitches that sometimes occur in the distribution of television programming, such as the loss of audio and/or video signals.²³ The Networks have implemented quality-control and monitoring systems to ensure that captions are delivered along with their audio and video signals.²⁴ These monitoring processes allow the Networks to immediately begin trouble-shooting and fixing any problem that might occur.²⁵

Commission.").

²⁰ TDI Reply Comments at 19-20.

²¹ *Id.* at 19.

²² See Comments of AZN Television *et al.* at 24.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 24-25.

A new outage reporting requirement would do nothing to eliminate or reduce the occurrence of occasional technical glitches. It simply would require a program network and/or distributor to divert its resources to filing paperwork with the Commission, rather than focusing its attention on resolving the technical problem.

Moreover, an “outage report” requirement would be unprecedented in the context of the distribution of television programming. There is no corresponding federal requirement of outage reports for video or audio signals – or even an entire cable system – because the Commission has wisely declined to micromanage the complex technical process of distributing television programming via cable or satellite. The Commission correctly has recognized that program networks and distributors already have sufficient incentives to keep the public informed of any technical problems they may experience and to rectify those problems as quickly as possible. Under these circumstances, a new regulatory reporting obligation is both unnecessary and inappropriate, and would be counter-productive.

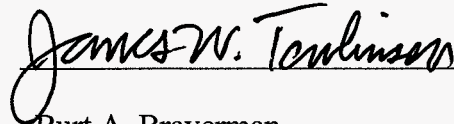
IV. CONCLUSION

For the reasons discussed above, the new rule changes proposed by TDI in its Reply Comments are unwarranted and would not improve the quality or reliability of closed captions. Rather, these proposals simply would add an unnecessary layer of administrative compliance, draining resources away from the objective of increasing the amount and overall quality of captioning, while providing few, if any, benefits to hearing-impaired television viewers. Therefore, the Networks respectfully request that the Commission reject TDI’s new and untimely proposed amendments to the captioning rules.

Respectfully submitted,

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By:

A handwritten signature in cursive script, reading "James W. Tomlinson", written over a horizontal line.

Burt A. Braverman

Maria T. Browne

James W. Tomlinson

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